

STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION
302 W. WASHINGTON STREET, SUITE E-306
INDIANAPOLIS, INDIANA 46204-2764

<http://www.state.in.us/iurc/>
Office: (317) 232-2701
Facsimile: (317) 232-6758

**IN THE MATTER OF THE COMMISSION)
INVESTIGATION AND GENERIC PROCEEDING)
OF RATES AND UNBUNDLED NETWORK)
ELEMENTS AND COLLOCATION FOR INDIANA)
BELL TELEPHONE COMPANY, INCORPORATED)
d/b/a SBC INDIANA PURSUANT TO THE)
TELECOMMUNICATIONS ACT OF 1996 AND)
RELATED INDIANA STATUTES)**

CAUSE NO. 42393

FILED

AUG 07 2003

You are hereby notified that on this date the Indiana Utility Regulatory Commission ("Commission") makes the following entry in this Cause:

INDIANA UTILITY
REGULATORY COMMISSION

On August 1, 2003, the following competitive local exchange carrier ("CLEC") parties to this Cause: AT&T Communications of Indiana G.P., WorldCom, Inc., McLeodUSA Telecommunications Services, Inc., Covad Communications Company, Time Warner Telecom of Indiana, L.P., Z-Tel Communications, Inc., and Sage Telecom, Inc. (collectively "Joint CLECs") filed *Joint CLECs' Motion to Compel and Request for Expedited Decision* ("Motion"). The Motion seeks a ruling to compel Indiana Bell Telephone Company, Incorporated ("SBC Indiana") to produce information that the Joint CLECs have requested from SBC Indiana in the course of discovery in this Cause. A Docket Entry was issued on August 4, 2003, directing SBC Indiana to respond to the Motion by August 6, 2003. On August 6, 2003, SBC Indiana filed its *Response to the Joint CLECs' Motion to Compel* ("Response"). In the Motion, the Joint Petitioners waived their right to reply in writing to the Response and requested that a telephonic hearing be scheduled no later than August 6, 2003. In the interest of providing an expedited ruling, the Presiding Administrative Law Judge finds that the Motion and Response provide enough information to rule on the Motion and that it is not necessary to hear additional argument.

The Joint CLECs informed the Commission and other parties in emails sent on August 5 and 6, 2003, that, based on discovery responses just received from SBC Indiana, they were withdrawing their motion to compel SBC Indiana to respond to certain discovery requests, identified as follows: MS-20, MS-49, MS-61, MS-76, ST-35, ST-36, ST-57, ST-117, ST-124,¹ ST-125, ST-129, ST-131, ST-133, ST-134, ST-135, ST-142, ST-143, ST-144, ST-145, ST-146, ST-147, ST-148, ST-178, ST-181, MS-65, ST-14, ST-15, ST-71, and ST-72.

¹ The Presiding Administrative Law Judge could not locate a reference to ST-124 in the Motion.

Based on the Motion and the subsequent withdrawal of certain discovery requests from the Motion, the following are the remaining discovery requests for which the Joint CLECs seek discovery compliance:

1. JB-4, JB-5, JB-6, and JB-7. These requests seek production of SBC's Loop Facility Analysis Model ("LFAM"). SBC Indiana's response to these requests was an objection to producing the LFAM information.
2. ST-9, ST-10, ST-11, ST-12, ST-16, ST-17, ST-18, ST-19, ST-38, ST-39, ST-41, ST-42, ST-43, ST-44, ST-45, ST-46, ST-47, ST-48, ST-49, ST-50, ST-53, ST-59, ST-69, ST-73, ST-74, ST-75, ST-76, ST-77, ST-78, ST-79, ST-80, ST-81, ST-82, ST-83, ST-84, ST-85, ST-100, ST-116, and ST-137. These are requests to which SBC Indiana has responded, but the Joint CLECs claim SBC Indiana has not provided the supporting data or documents necessary to understand how the responses were determined.
3. ST-7, ST-14, ST-16, ST-41, ST-48, ST-59, and ST-173. These are requests to which SBC Indiana has responded, but the Joint CLECs claim that the attachments identified in the responses have not been provided.
4. ST-58, ST-67, and ST-68. These are requests for the number and location of certain subtending circuits. The Joint CLECs claim that SBC Indiana has provided information as to the number of circuits, but not their locations.
5. ST-157. This request seeks information regarding the underlying databases of the Operation Support Systems ("OSS") used by SBC Indiana. The Joint CLECs claim that SBC Indiana's response to this request interprets an OSS as only a user interface and does not provide information as to the databases.
6. ST-133, ST-134, ST-135, ST-154. The Joint CLECs claim that SBC Indiana's responses to these requests state that the responses will be supplemented when responsive information is available. The Joint CLECs seek production of any supplemental information or a response that none exists.

The Response to the Motion asserts that the request for the LFAM (JB-4, JB-5, JB-6, and JB-7) is unduly burdensome because SBC no longer uses this model and has little if any ability to use it today; irrelevant because this model would not result in a useful comparison to the cost model upon which SBC Indiana relies in this Cause; and untimely insofar as the procedural schedule established in this Cause required that any loop cost study be prefiled by May 16, 2003. The Response also asserts that SBC Indiana has provided supplemental responses to all but five of the "ST" requests that the Joint CLECs contend are still at issue.

Discovery is designed to be a self-executing process with little, if any, supervision by the trial court,² and the trial court is vested with broad discretion in deciding discovery issues.³ It appears that while SBC Indiana has, for the most part, provided responses to the Joint CLECs' "ST" discovery requests, some responses may not be complete. The "ST" requests identified above in paragraphs 2 through 6 are relevant to the subject matter of this proceeding and SBC Indiana has not asserted any objection to the requests. To the extent it has not already done so, SBC Indiana should provide complete responses to the above identified "ST" discovery requests.

SBC Indiana's argument as to the untimeliness of the request for the LFAM (JB-4, JB-5, JB-6, and JB-7) is well taken. The parties' agreed-upon procedural schedule in this Cause established, except for SBC Indiana's loop cost study due May 16, 2003, that all cost studies would be prefiled by May 30, 2003. The stated reason as to why the Commission scheduled a Technical Conference for June 6, 2003, was so that all prefiled cost studies could be explained to Commission staff and to the other parties. The Motion states that requests JB-4, JB-5, JB-6, and JB-7 were not served until July 2, 2003. Scheduling the prefiling and explanation of cost studies early in this proceeding was a reflection of the realization that understanding the content and manipulation of cost studies is a complex task. The Motion states that the purpose in requesting the LFAM is to allow a comparison between the costs derived by SBC Indiana through the cost model it has proposed in this Cause with the costs resulting from application of the LFAM. Even though the LFAM may not be a cost model to be supported or promoted by the Joint CLECs, it is, nonetheless, a unique cost model which will produce unique costs that, if to be given thorough consideration in any context, will require an understanding of complex subject matter, which was contemplated when the deadline for prefiling all cost studies was established and the Technical Conference was scheduled. Joint Petitioners did not request the LFAM until this prefiling deadline and Technical Conference had passed. A proposal that the Commission consider this cost model could have been made in a timely manner, compliant with the agreed-upon procedural schedule.


The Motion is granted, in part, as follows: On or before August 11, 2003, SBC Indiana should respond to each of the "ST" requests identified above in paragraphs 2 through 6 in a manner that: provides Joint CLECs with requested information, either for the first time or as a supplemental response, and states that no other information is known to exist that would be responsive to the request; states that a complete response has previously been given and that no other information is known to exist that would be responsive to the request; or states, or restates, that no information is known to exist that would be responsive to the request.

The Motion is, in part, denied. Denied is Joint Petitioners' request to compel production of responses to discovery requests identified as JB-4, JB-5, JB-6, and JB-7.

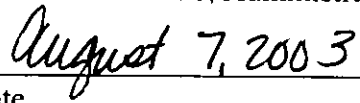
² *Chrysler Corp. v. Reeves*, 404 N.E.2d 1147, 1151 (Ind. Ct. App. 1980).

³ *Hatfield v. Edward J. DeBartolo Corp.*, 676 N.E.2d 395, 399 (Ind. Ct. App. 1997).

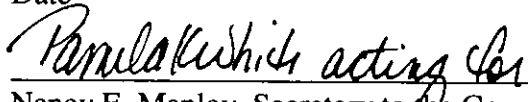
IT IS SO ORDERED.



William G. Divine, Administrative Law Judge



Date



Nancy E. Manley, Secretary to the Commission